IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Hari Mohan Vs. State of Rajasthan & Anr.

S.B.CR. MISC. PETITION NO.777/1998

DATE OF ORDER :: July 04, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr. Manish Shishodia, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor.
Mr. M.K.Garg]
Mr. Niranjan Singh] for non-petitioner No.2.

BY THE COURT:

By the instant criminal misc. petition under section 482 of the Code of Criminal Procedure, 1973 (for short `the Code` hereinafter), the petitioner seeks quashing of criminal proceedings in Criminal Case No.171/1998 pending before the Court of Judicial Magistrate, Padampur (for short `the trial court` hereinafter).

Briefly stated the facts which are relevant and necessary for decision of the petition are that complainant-non-petitioner No.2 Arjun (for short `the complainant` hereinafter), who is one

of the partners of partnership firm M/s Neelkanth Marbles, filed first information report No.94 with the Police Station, Sadar, Sri Ganganagar against the petitioner and one Vijay Kumar for the offences under sections 420 and 406 I.P.C. Usual investigation was carried out by the police and negative final report was filed.

The complainant filed a complaint and the protest petition. On the protest petition, the trial court took cognizance of the offence under section 406 I.P.C. and issued the process. The partnership firm M/s Neelkanth Marbles, as per the partnership deed dt. 19.5.1991 comprising as many as four partners viz. Petitioner Hari Mohan, Yogendra Gupta, complainant Arjun and Smt. Vidyawati, each having share of 25% was constituted. The complainant filed the FIR stating therein that all the four partners have equal share in the partnership firm. The petitioner, who had been residing at Sriganganagar, was looking after the account of the firm, he assured that he will keep the proper account. On the belief that petitioner will keep the proper account, the entire business was left with him. On 3.1.1994, the petitioner informed him that entire goods have been sold by him and he deposited the amount in bank account of the firm. On being enquired from the bank, it was revealed that a sum of Rs.75,000/- has been deposited by the petitioner in the bank account of the firm. On checking the firm, it was revealed that

there was no marble cutting machine in the firm, whereas there was a marble cutting machine in the firm which according to the complainant was sold by the petitioner. On these allegations, the police investigated the matter and came to the conclusion that it is a civil dispute between the partners of the firm as each partner has dominion over the property of the firm. On the protest petition, the trial court took the cognizance and issued the process. Hence, this petition seeking quashing of the proceedings.

I have heard learned counsel for the parties. Carefully gone through the record of the trial court.

It is contended by learned counsel for the petitioner that the property in question is of the partnership firm of which petitioner himself is one of the partners and every partner of the firm has dominion over the property of the firm by reason of fact that he is partner and in that capacity, the petitioner himself had a dominion over the property of the firm. It is further contended by the learned counsel that there is no evidence of entrustment of the property by the complainant to the petitioner and, therefore, the very essential ingredients of the offence of criminal breach of trust are missing. He has relied on a decision of Hon'ble Supreme Court in Velji Raghavji Patel vs. The State of

Maharashtra, **AIR 1965 SC 1433** and a decision of Madras High Court in Alagiri & Anr. vs. State by Inspector of Police, E.I. Police Station, Madurai, **1996 CRI.L.J. 2978.**

Learned counsel appearing for the complainant submits that the petitioner was though one of the partners but was entrusted with the affairs of the partnership firm and during such period, he misappropriated the property of the firm by selling the machine and not accounting properly. According to learned counsel, though the marble cutting machine was sold for a sum of Rs.2,00,000/-, but a sum of Rs.75,000/- was deposited in bank account of the firm. Learned counsel for the complainant has relied on a decision of Hon'ble Supreme Court in Anil Saran Vs. State of Bihar and Anr., **1995 SCC (Cri) 1051.**

I have given my thoughtful consideration to the rival submissions made by learned counsel for the parties.

To construe the offence of criminal breach of trust as envisaged under section 405 I.P.C. as has been held by Hon'ble Supreme Court in Kailash Kumar Sanwatia vs. State of Bihar and Anr., **(2003) 7 SCC 399**, the essential ingredients are that entrusting a person with property or with any dominion over property, that person entrusted (a) dishonestly misappropriating

or converting that property to his own use; (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

In Velji Raghavji Patel Vs. State of Maharashtra (supra), the Apex Court while considering the provisions of section 405 I.P.C., held that upon the plain reading of S. 405 I.P.C. it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law, etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of S.405. In order to establish "entrustment of dominion" over property to an accused person, the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment and, therefore, it was held that the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special

agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement, a partner receives money belonging to the partnership, he cannot be said to have received it in a fiduciary or in other words cannot be held to have been "entrusted" with dominion over partnership properties.

In Alagiri & Anr. vs. State, by Inspector of Police, E.I. Police Station, Madurai (supra), it was held that before a person can be said to have committed criminal breach of trust within the meaning of S.405, IPC it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment.

In S.A.Q. Hasmi Vs. State (1980 Cri LJ 1030), the Calcutta High Court while dealing with the scope of Section 405, IPC on a similar fact held that ordinarily a partner cannot institute a criminal proceeding for criminal breach of trust of partnership property against another partner unless it can be shown that by a special contract the accused was entrusted with the dominion

over the property and in breach of such entrustment he has misappropriated the money.

In Bhuban Mohan vs. Surendra Mohan, (AIR 1951 Cal 69), a Full Bench of the Calcutta High Court held that a charge under S.406, I.P.C., cannot be framed against a person who, according to the complainant, is a partner within him and is accused of the offence in respect of property belonging to both of them as partners.

In Anil Saran Vs. State of Bihar and Anr. (supra), the Hon'ble Supreme Court held that a partnership firm is not a legal entity but a legal mode of doing business by all the partners. Until the firm is dissolved as per law and the accounts settled, all the partners have dominion in common over the property and funds of the firm. Only after the settlement of accounts and allotment of respective shares, a partner becomes owner of his share. However, criminal breach of trust under Section 406 is not in respect of the property belonging to the partnership firm, but is an offence committed by a person in respect of the property which has been specially entrusted to such a person under a special contract and he holds that property in fiduciary capacity under special contract. If he misappropriates the same, it is an offence.

In the instant case, there is no evidence that the partnership firm has been dissolved as per law or the accounts settled, and the partners have dominion in common over the property and the respective shares allotted to each of the partners. On the contrary, the case of the complainant is that it is a partnership firm named and style as M/s Neelkanth Marbles comprising four partners having 25% shares each and the petitioner is one of the partners. Unless the dissolution of firm is taken place and account is settled all the partners of the firm have dominion in common over the property and, therefore, if one of the partners misappropriated the property of the firm, it cannot be said that he has committed criminal breach of trust. The very essential ingredients to construe the offence punishable under section 406 IPC of entrustment of the property are missing in the instant case.

Keeping in view the decisions of the Hon'ble Supreme Court referred hereinabove, in my view from the material on record, the very essential ingredients to construe the offence of criminal breach of trust are missing in the instant case and, therefore, the proceeding against the petitioner deserves to be quashed.

Consequently, the criminal misc. petition is allowed. Criminal proceeding against the petitioner in criminal case No.171/1998 arising out of crime report No.13/94 and the protest petition filed by the complainant is hereby quashed. The order framing charge dt. 28.1.1998 is set aside. The petitioner is discharged of charge under section 406 I.P.C. He is on bail. His bail bonds stand discharged.

[H.R.PANWAR],J.

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